

Agenda

Item #8



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: January 19, 2011

Re: Staff Recommendation on Overspending by Brian Hale

In 2010, Brian Hale was a first-time candidate for the State House of Representatives. His campaign accidentally spent \$112.99 more than it was permitted under the terms of the Maine Clean Election Act program. After hearing of the error by telephone from the campaign treasurer, the Commission staff asked that the candidate submit a letter to the Commission explaining the circumstances. Mr. Hale submitted a letter December 11, 2010. In the letter, he explains that after the death of his first campaign treasurer in June 2010, he asked Carlton Demmons to serve as his treasurer. The treasurer was not aware that the candidate had one of the campaign checkbooks and could write checks. The candidate neglected to tell Mr. Demmons that on July 9 and August 16, he had written two checks totaling \$112.99.

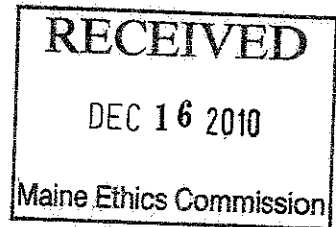
I refer you to my penalty notice to Mr. Hale dated December 29, 2010 for a fuller explanation of the facts and the relevant law. As explained in the penalty notice, spending more than is permitted by the Maine Clean Election Act is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. The staff believes that some financial penalty is appropriate even in the case of small, unintentional overspending violations to underscore that it is an important responsibility of publicly financed candidates to keep their total spending within the legal limitation.

The staff accepts the candidate's explanation, and recommends the assessment of a \$50 civil penalty. As is explained in my memo concerning overspending by Sen. Roger Katz (agenda item #9), that is the action that the Commission has taken regarding similar overspending violations committed by three candidates in the 2006 and 2008 elections. We also believe a \$50 penalty is appropriate because:

- Mr. Hale ran his first legislative campaign in 2010. This was his first campaign as an MCEA candidate.
- The Commission staff accepts that this was an unintentional violation. We know of no evidence suggesting that the candidate intended to exceed the expenditure limitations of the MCEA program.

- The campaign treasurer demonstrated good faith by telephoning the Commission staff to self-report that the campaign had a negative cash balance.

Thank you for your consideration of this recommendation.



December 11, 2010

Jonathan Wayne
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

Mister Jonathan Wayne,

The purpose of this letter is to explain our error in over spending in the recent District 85 State Representative election. It was explained in the telephone conference that my original campaign treasurer Maitland Richardson died just prior to the primary election. I then had Carlton Demmons replace him for the general election. Mr Demmons was not aware that I had a check book as well as him on our campaign checking account. I wrote out two checks that he was not aware of and that I neglected to inform him I had written. This happened on July 9th, a check for \$50.00 to the Secretary of State for a Notary appointment for a campaign worker and on August 16th, for \$62.99 for pictures for palm cards. This did not come to our attention until we were notified by our bank the checking account was overdrawn. We then went over the bank statements and discovered what the problem was. We have since sold a computer that was purchased for the campaign and covered the account. This was an oversight error and was in no way intentional.

I hope this will be a satisfactory explanation of what occurred.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. D. Hale".

Brian D. Hale



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

December 29, 2010

Brian D. Hale
122 Malbons Mills Road
Skowhegan, ME 04976

Dear Pastor Hale:

Thank you for your December 11, 2010 letter explaining why your campaign for State House of Representatives spent more than was authorized under the Maine Clean Election Act. In the letter, you explained that after the death of your first campaign treasurer in June 2010, you asked Carlton Demmons to serve as your treasurer. He was not aware that you had one of the campaign checkbooks and could write checks. You neglected to tell him that on July 9 and August 16, you had written two checks totaling \$112.99. Mr. Demmons confirmed for me in a previous phone call that just before the general election he was monitoring the balance in the campaign checkbook, knew that it was close to zero, but did not know you had written two checks. As a result, the checking account was overdrawn.

The campaign had purchased a computer. Under the Commission's regulations, it was required to sell the computer after the general election for fair market value and to return the proceeds to the Commission. After the election, the campaign sold the computer to you for \$200. The campaign used roughly \$112.99 of these proceeds to cover the overdrawn checks. The campaign returned to the Commission \$90.09, which included the remaining proceeds from the computer sale and, apparently, \$3.08 in unspent campaign funds. Based on your letter and a review of your final campaign finance report, the staff of the Ethics Commission has made a preliminary finding that your 2010 campaign spent \$112.99 more than was permitted under the Maine Clean Election Act.

At the January 27, 2011 meeting of the Ethics Commission, the staff will recommend that the members of the Commission find the campaign in violation and assess a civil penalty of \$50 for the violation. The meeting will be held at 11:00 a.m. at the Commission's office at 45 Memorial Circle (two hours later than our usual start time). As explained below, you will have an opportunity to respond to the proposed finding of violation and penalty at the meeting and/or in writing.

Limits on Spending by Maine Clean Election Act Candidates

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state and authorized by the Commission:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. § 1125(6))

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage. It is therefore important for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding the amount which they are authorized to spend.

Request to Return Funds

The Commission staff requests that you additionally return \$112.99 in personal funds to the Commission before its January 27 meeting. We make the request because you have used the proceeds from the sale of the computer for regular campaign purchases. Those proceeds should have been returned to the State of Maine under the Commission's regulations. Since the campaign spent more than it was authorized, the Commission staff believes the better resolution is for you to have purchased the additional campaign services with your personal funds, rather than with funds that should have been returned to the State of Maine. If you disagree with this request, we can discuss the matter with the Commissioners at the January 27 meeting.

Ethics Commission's Consideration of this Matter

At the January 27 meeting of the Commission, the staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by spending more campaign funds than you were authorized to promote your campaign. We will also recommend that the Commission assess a penalty of \$50. The recommended penalty is relatively small because the overspending was unintentional.

The staff recommends that you attend the January 27 meeting to answer any questions of the Commissioners. If you would like, you may also respond to the proposed penalty in writing. If we receive a written response by Friday, January 14, I will include the response in a packet of materials that is mailed to the Commission members in advance of the meeting. Please feel free to fax it to 287-6775 or e-mail it to me at Jonathan.Wayne@maine.gov. Our office will be closed on January 14 because of a government shut-down day.

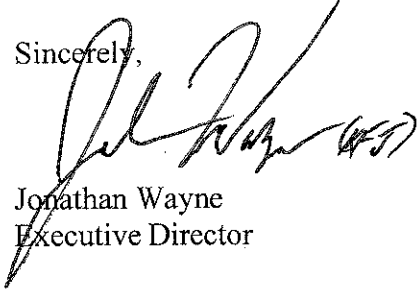
Please be aware that the Commission will have the discretion to assess a penalty that is greater or less than the staff recommendation, or to assess no penalty at all. Under 21-A

Pastor Brian D. Hale
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December 29, 2010

M.R.S.A. § 1127(1), the Commission may assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act.

Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

cc: Carlton Demmons

RECEIVED

JAN 18 2011

Maine Ethics Commission

1/14/2011

John,

Here is the check for the overdraft on my husband's campaign. I believe at this time Brian + Carlton will be present on 1/27/2011.

Thanks for your time and consideration.

Karen Hale
for Brian Hale

BRIAN D. HALE
KAREN S. HALE
122 MALBONS MILLS RD.
SKOWHEGAN, ME 04976

52-7438/2112

2559

DATE

1/14/2011

PAY TO
THE ORDER OF

State of Maine - ETHICS COMMITTEE \$112.99
ONE HUNDRED TWELVE + 99/100

DOLLARS

Security Features
Detailed on Back.

DELIVER VALUET OR EQUIVALENT

Bangor
Savings Bank

BANGOR, MAINE 04401


MEMO

Skowhegan
Brian D. Hale

K. Hale

BP

SPECIALTY LEMON

 **6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. A television advertisement purchased with these revenues must be closed-captioned when closed-captioning is available from the broadcasting station who will broadcast the advertisement. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2009, c. 105, §1 (AMD) .]

6-A. (TEXT EFFECTIVE UNTIL 9/1/11) Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

[2007, c. 443, Pt. B, §6 (NEW) .]

6-A. (TEXT EFFECTIVE 9/1/11) Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8-A for certified candidates in a contested election.

[2009, c. 302, §12 (AMD); 2009, c. 302, §24 (AFF) .]

6-B. Expenditures as payment to household members.

[2009, c. 302, §13 (RP) .]

6-C. Expenditures to the candidate or family or household members. Expenditures to the candidate or immediate family member or household member of the candidate are governed by this subsection.

A. The candidate may not use fund revenues to compensate the candidate or a sole proprietorship of the candidate for campaign-related services. [2009, c. 302, §14 (NEW).]

B. A candidate may not make expenditures using fund revenues to pay a member of the candidate's immediate family or household, a business entity in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest or a nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director or chief financial officer, unless the expenditure is made:

- (1) For a legitimate campaign-related purpose;
- (2) To an individual or business that provides the goods or services being purchased in the normal course of the individual's occupation or the business; and

21-A MRSA §1127. VIOLATIONS

★ **1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2009, c. 302, §23 (AMD) .]

2. Class E crime. A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[1995, c. 1, §17 (NEW) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD). 2009, c. 302, §23 (AMD).